

No. 9(1)81-6Lab.13454.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Bhiwani Textile Mills, Bhiwani.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Complaint No. 11 of 1979 under section 33 of the
I.D. Act, 1947.

Between

SHRI JAGDISH, COMPLAINANT AND THE
MANAGEMENT OF M/S. BHIWANI TEXTILE
MILLS, BHIWANI

Present :

Shri S. R. Gupta, for the workman.

Shri B. R. Ghaiye, for the management.

AWARD

This complaint was filed by Shri Jagdish, complainant, against the opposite party alleging that illegal change in his condition of service was made by which he suffered a monthly loss of Rs. 65. This complaint was made there being pending reference number 95 and 106 of 1977 and 248 of 1978. Notice of the complaint was sent to the other party who appeared and filed reply on which following issue was framed by my learned predecessor on 28th November, 1979 :—

- (1) Whether the respondent have altered conditions of service of the complainant ? If so, in what respect and to what effect ?

And the case was fixed for the evidence of the management who examined himself as WW-1 and Shri Shivtaj Singh as WW-2. The management examined Shri Raj Kumar, Head Time Keeper as MW-1 and Shri V. S. Bhargav, Dy. Weaving Master as MW-2. Arguments were heard. Now I give my finding on the issue :—

ISSUE NO. 1 :

The complainant stated that he was working in the mills since 1965. He joined as a Weaver but from 1967 he began to work as helper. He was confirmed as helper in 1972. In August, 1978, he was given the job of two looms weaver by which a loss of Rs. 65 was caused to him. In cross-examination he stated that he received card for weaver helper in 1968. He had not

brought the same but will produce later on. When he was made permanent helper he was also issued a card which he had not brought. He further replied that badli was given to all weavers to work as helpers. He also got badli helpers work. In 1972, he was not given any written order for making him two looms weaver. In 1978, he was a permanent helper and not badli helper. His card had endorsement as helper. It did not contain the word badli. In the card the word weaver was inserted in place of helper in the year 1978. He could produce that card. He denied the suggestion that he was never made a permanent helper. At present he was working as two looms weaver. He had made a complaint orally to his Khata Incharge in 1978. He did not make any other complaint to any authority. WW-2 stated that he was working in the weaving department for the last 19 years. He knew the complainant who worked as two looms weaver. He was previously a helper. He was made helper since 1968 and after 1978 he was working as two looms weaver. A helper if made two looms weaver suffers a loss of about Rs. 50 to Rs. 60 a month of his earning. In cross-examination he stated in 1965, the complainant worked in different khata. He did not see the card of the complainant but he had made a complaint to him about the change. He denied the suggestion that he deposed falsely.

MW-1 stated that he had brought pay sheets for the year 1977 in respect of the complainant. Ex. M-1 was copy prepared from the pay sheets. Ex. M-2 was abstract from different pay sheets. According to the record the complainant was a weaver and was not a helper. However, job of helper was taken from him on badli basis. He was still a weaver. In cross-examination he stated that the complainant joined mill as weaver. In 1971, there were 142 weavers and seven helpers in one shift. A weaver worked on two looms and a helper was allotted to a khata of 32 to 36 looms. At that time there were 4 khatas of terene and two khatas of auto looms. It was correct that one helper was allotted one particular khata. The complainant was not allotted any particular khata because he was not a helper. In attendance register, khata number in which a particular helper worked on a particular day was given. However, khata number was not mentioned on the attendance card. Cards Ex. W-1 to W-5 were issued by the management. The entry within

red circle on point A of Ex. M-1 that the workman used to work on two looms number 249 to 252. The entry on Ex. W-5 at point A meant that the workman was helper of khata number 5. In 1976-77, the weavers were paid wages on piece rate basis. The helpers were paid on the attendance put in by them. Their daily rate was determined on the basis of efficiency. The complainant had worked in khata number 5 during the month of June, 1976. He worked for 26 days in the said month. He was a permanent hand in that month. In June, 1976, the complainant never worked as weaver. The word BH-4, against his name in the register meant badli helper khata number 4. He admitted that according to the record from January, 1977 to June, 1977, this complainant never performed the duty of a weaver and the BH-4 was written against his name. The work of weaver was taken from him from 26th July, 1977. In the month of August, the workman worked as weaver throughout the month. MW-2 stated that the complainant used to work as weaver when cotton was in process. He worked as badli helper some time. He never passed order to make the complainant permanent helper. In cross-examination he stated that he joined this mill in 1976. The workman used to work as weaver and whenever there was a vacancy he used to work as helper.

The learned representative for the complainant argued that the complainant was made a helper and he worked continuously for months together. His condition of service was changed in 1978 and he was put to loss of Rs. 65 P.M. The learned representative for the management argued that he was never made permanent. Job of a badli helper was taken from him. He was given chance whenever a vacancy arose. He also argued that the complainant had not produced any letter or order making him as helper.

I have gone through the evidence and record produced by the parties. The complainant produced cards Ex. W-1 to W-5. In Ex. W-5, he was shown as helper. This is for the month of June, 1978. According to the management record Ex. M-2 and M-2 which is abstract from attendance register for the months June, 1970, June, 1971, July, 1971, April, 1973, June, 1976 and from January, 1977 to December, 1977. I find that the complainant was shown as weaver and badli helper from time to time. It is admitted by the management MW-1, that the complainant continuously worked as helper from January, 1977 to June, 1977. But the explanation that he was never issued orders making him a permanent helper is plausible. It is a matter

of routine in such concern to depute a workman on the next higher job in vacancy. No formal order was ever issued in such cases to the workman. The contention of the learned representative for the management that the complainant has failed to produce any order making him permanent helper is not sound. It was for the management to prove that the workman was officiating for some other permanent workman. MW-2 has categorically denied having passed such orders. But continuous work in a post for six months and change of designation on the attendance card had rightly given the impression to the complainant that he had become helper. The burden shifted to the management to explain the circumstances in which the complainant continued as helper for six months, which was not discharged. I find that there had been change in condition of employment of the complainant prejudicially to him. I, therefore, accept the complaint and pass an award accordingly.

Dated the 25th October, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 997, dated 2nd November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)81-6Lab./13461.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Auto Pins (India) Regd., Plant II, Mathura Road, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference Nos. 478, 501 & 506 to 508 of 1978

Between

SHRI GERJA SHANKAR, CHHEDI LAL,
KHURSHEED AHMED, SAJAN LAL AND
BANSI LAL, WORKMEN AND THE MANAGE-
MENT OF M/S. AUTO PINS (INDIA) REGD.
PLANT II, MATHURA ROAD, FARIDABAD.

Present :

Shri Yoginder Singh, for the workmen.
Shri R. C. Sharma, for the management.

AWARD

By order No. ID|FD|190-78|47654, dated 20th October, 1978, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Gerja Shankar was justified and in order ? If not, to what relief is he entitled ?

By order No. ID|FD|11|188-78|48017, dated 23rd October, 1978, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Chhedi Lal was justified and in order?

if not, to what relief is he entitled ?

By order No. ID|187-78|48072, dated 23rd October, 1978, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Khursheed Ahmed was justified and in order ? If not, to what relief is he entitled ?

By order No. ID|FD|191-78|48099, dated 23rd October, 1978, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Sajan Lal was justified and in order ? If not, to what relief is he entitled ?

By order No. ID|FD|189-78|48093, dated 23rd October, 1978, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Bansi Lal was justified and in order ? If not, to what relief is he entitled ?

between the management of M/s. Auto Pins (India) Regd. Plant II, Mathura Road, Faridabad and its workmen S|Shri Gerja Shankar, Chhedi Lal, Khursheed Ahmed, Sajan Lal and Bansi Lal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act.

On receipt of the order of references notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 13th June, 1979 :—

(1) Whether the termination of services of the workmen concerned was justified

and in order ? If not, to what relief are they entitled ?

(2) Whether the plant has been taken over by another management ? If so, to what effect ?

And the case was fixed for the evidence of the management who examined Shri Gurcharan Singh, Supervisor as MW-1, Shri Bakshi Singh, Die Setter as MW-2, Shri Desh Raj, ex-partner as MW-3, Shri Baljeet Singh, Radiologist, B. K. Hospital as MW-4 and Shri Om Shanker Tripathi, their Time Office Clerk as MW-5. The workmen examined Shri Gerja Shankar as WW-1, Shri Khursheed Ahmed as WW-2, Shri Sajjan Lal as WW-3 and closed his case. Arguments were heard. These references were consolidated for the purpose of recording of evidence by my learned predecessor,—vide his order dated 1st March, 1979. It was ordered that evidence will be recorded in reference number 478 for all the cases. Now I give my finding issuewise :—

ISSUE NO. 1 :

MW-1 stated that he was in the management service since 1964. He was promoted as Supervisor in the press shop. Painting and press shop were at a distance of 10 paces. He supervised that shop at night also. All the concerned workmen were helpers in the factory. They were on duty from 5.00 p.m. to 1.00 a.m. under his supervision and he reported,—vide Ex. M-1. There was another workman in the paint shop and he had asked these workmen to bring sheets from the godown and placed them on shearing machine for further operation. They refused to do the same although they were idle at that time. He told them that matter will be reported to the management. They threatened him with dire consequences outside the factory gate. On his report the management took action and turned them out of the gates. On 22nd April, 1978, when he was off from duty at 1.00 a.m., he went out of the factory gate. When he had gone 200 yards from the factory some persons stopped him showing lathis. They shouted. Shri Sajan Lal, Bansi Lal, Chhedi Lal came there. Shri Gerja Shankar gave him first lathi blow on his hand. Shri Khursheed Ahmed gave lathi blow on his shoulder. He got injuries on several parts of the body. His leg was also fractured. Shri Tripathi and Shri Bakshi Singh, etc. workers were behind him. He fell unconscious. He was put in a rickshaw and taken to hospital. The matter was reported to the police. He was medically examined. His leg

was plastered which lasted for 3½ months. He could not join his duty for six months. He had given Ex. M-2 to M-22 to the management. His dispensary slips were Ex. M-23 to M-30. He was X-rayed. In cross-examination he stated that the workmen had refused work on 20th April, 1978. When two persons approached him he identified them. He did not know the persons who had reached thereafter he was assaulted. Ex. M-1 was scribed by him. The report at the police station was lodged at his instance. MW-2 stated that he knew Shri Gurcharan Singh, Foreman and the workmen concerned. They were helpers. The Foreman had asked them to lift sheets. They had replied that they will not work any more. The Foreman had told them that he will report the matter to the management. Two days later MW-1, Shri Tripathi, Shri Dev Raj, and himself at 1.00 a.m. were going from the factory. Shri Gerja Shankar and Shri Khursheed Ahmed came and asked them to go back because they had some matter with Shri Gurcharan Singh. We get back out of fear. Then they gave lathi blow to Shri Gurcharan Singh. Two other workers had also joined in the assault. They were Shri Gerja Shankar and others. They ran away after assaulting. He was taken into a car. In cross-examination he stated that he was a witness to the refusal of the workman for work. He had seen Shri Khursheed Ahmed and Gerja Shankar who had come first. He did not remember the name of two others. Sh. Khursheed Ahmed did not work under him. He did not know all the workers of the factory. He could identify only some of them. He further stated that the injured was placed in a rickshaw first and then he was taken in a car. MW-3 stated that he was painter in paint shop of Plant II. Shri Khursheed Ahmed etc. were helpers. They used to work at other place also. Shri Gurcharan Singh was a Supervisor. He had asked them to lift some sheets on 20th April, 1978 but they refused. He told them that the matter will be reported to the management. He further corroborated the statement of MW-2. MW-4 stated that he had brought summoned records. As per record Shri Gurcharan Singh was X-rayed by Dr. R. R. Goyal for right jist joint, right shin, left shin, right shoulder. He found fracture of left Tibia. Ex. M-23 was copy of report. In cross-examination he stated that he had not brought MLR, therefore, he could not say the duration of injury and medical examination. MW-5 stated that he worked in Plant II of the management. All the concerned workmen were also employees of the management. Shri Gur-

M-1. All the workmen were chargesheeted by the management. He served the chargesheets. They had told to see Shri Gurcharan Singh. He further corroborated the statement of MW-1 and named all the concerned workmen who had assaulted MW-1. In cross-examination he stated that he had resigned in 1978 because he had got better job in M/s. Bolton India. He was again in service of the management because terms of service were now better than Bolton India. He denied the suggestion that he got job because he was to appear as a witness for the management. He had seen the occurrence from a distance of 10—15 paces. He had also appeared as a witness in the criminal case. He denied the suggestion that he was deposing for the benefit of his service.

WW-1 stated that he joined service as helper on 6th December, 1976 in the paint shop. In December, 1977, the workers had formed a union and submitted a demand notice in January, 1978. Negotiations were held on 13th February, 1978 but there was no settlement. On 14th February, 1978, the workmen held a gate meeting. On 21st April, 1978, he was given a show cause notice. On 26th April, 1978 he was arrested from the factory gate when he had come for duty. He was suspended on 21st April, 1978 but no chargesheet was issued, nor enquiry was held. A criminal case was tried against him and he was convicted by the trial court but acquitted by the Sessions Court. He further stated that he was removed from service by illegal way. He admitted his signatures on Ex. M-33 and M-35. In cross-examination he admitted receipts of Ex. M-44 and M-47. He admitted his writing and signature on Ex. M-52. He also admitted his address to be correct on Ex. M-57. He replied that he was not associated in negotiations on 13th February, 1978. He did not know if previously there was an INTUC union. He denied that Shri Gurcharan Singh was a supervisor and he had asked them to bring sheets. He did not refuse. He admitted that Shri Gurcharan Singh had suffered injuries and was admitted in the hospital but denied the suggestion that he was assaulted by the concerned workmen. WW-2 corroborated the statement of WW-1 and stated that he also did not receive any chargesheet. He admitted that he was convicted by the lower court but was acquitted by the Sessions Court. In cross-examination he admitted his signature on Ex. M-34, M-44 and M-49. He admitted his reply Ex. M-39. He admitted address on Ex. M-59 to be correct. WW-3 also stated that he was suspended and was arrested on 26th April, 1978. He admitted

acquitted by the Sessions Court. He stated that the management used to harass them but they never refused work. He admitted his address correct on Ex. M-40, M-55 and admitted receipt of Ex. M-37, M-43 and M-48.

The learned representative for the management argued that the workman had assaulted their supervisor. They were chargesheeted but did not reply separately. He further argued that S Shri Gerja Shankar, Khursheed Ahmed and Sajjan Lal were convicted for nine months R.I. Shri Chhedi Lal, workman had since died and Shri Bansi Lal, workman did not appear in the witness box. He further argued that the assault of a supervisor was an act of serious misconduct. They were dismissed for the same reason. On the other hand, the learned representative for the workmen argued that there was a delay of 4 days in chargesheet. No domestic enquiry was held by the management, nor any good reason was given as to why a domestic enquiry was not held. He further argued that MW-1 had become unconscious, therefore, could not see the persons who had assaulted him.

This is a simple case of assault by the workmen. The injured person was their supervisor and he was going after his duty at 1.00 a.m. The workmen were issued chargesheets which they had admitted. The reply of all the concerned workmen is identical in which they have stated that the charges were wrong, therefore, chargesheet may be filed. The chargesheet mentioned assault on Shri Gurcharan Singh. In the second chargesheet, the allegations of assault in-discipline, stone throwing, putting vehicles to fire etc. were levelled against the workmen. The reply was again the same. I find that the management led evidence so far as first chargesheet was concerned. The injured supervisor Shri Gurcharan Singh appeared as MW-1 and narrated the whole story which was further corroborated by the other witnesses. The management has also placed on file certified copy of order passed by the Judicial Magistrate Ist Class in case number 299/2 of 1978 State V/s. Gerja Shankar, Khursheed Ahmed and Sajjan Lal under section 325/34 IPC FIR dated 26th April, 1978. In the judgement the same prosecution story is given. It is also there that Shri Gurcharan Singh had as many as 11 injuries on his body. All the three workmen were convicted for the offence. The workmen did not file copy of the order of Sessions Court. As regards the domestic enquiry I find that it is now settled law that the management could prove the misconduct before the adjudicating authority in case

no domestic enquiry was held by the management. A defective enquiry and no enquiry are at the same footing. The management has proved the misconduct by leading evidence in this case. As regards the dismissal order, I find that the same were sent to the workmen by registered post. The address on the letter which were returned back as refused has been admitted by the workmen to be correct. In the circumstances, I hold issue No. 1 in favour of the management.

ISSUE NO. 2 :

No evidence was led by the management on this issue, nor it has any bearing on the case. This issue is decided against the management.

While answering the reference, I give my award that the termination of services of workmen concerned were justified and in order. The workmen are not entitled to any relief.

Dated 24th October, 1981.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 1003, dated 2nd November, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

The 7th December, 1981

No. 9(1)-81-6Lab./13534.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Haryana Roadways, Gurgaon.

IN THE COURT OF SHRI HARI SINGH
KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD.

Reference No. 64 of 1981
between

SHRI BIR SINGH, WORKMAN AND THE
RESPONDENT MANAGEMENT OF
M/S HARYANA ROADWAYS,
GURGAON.

Shri S. K. Goswami, for the workman.
Shri K. L. Piplani, for the management.

AWARD

This reference No. 64 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/86-80/6658, dated 4th February, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Bir Singh, workman and the respondent management of M/s Haryana Roadways, Gurgaon. The terms of the reference was:—

- (i) Whether the termination of services of Shri Bir Singh was justified and in order? If not, to what relief is he entitled?

On receiving this reference, notices were issued to the parties and the parties filed their pleadings on the date fixed. The case of the claimant is that he was appointed from 18th December, 1971 as Conductor in the Haryana Roadways and his services were terminated on 18th March, 1976, without show cause notice given before passing the orders. The punishing authority considered the previous record of the claimant which never found part of the chargesheet. No enquiry was ever held with regard to the previous record of the applicant. The applicant cannot be punished for same charge and the applicant was not allowed to cross examine the witness during the enquiry proceedings. Thus the order of termination is quite illegal and not maintainable. He further stated that the respondent had no power to take action under the Punjab Civil Service Rules, 1952 and as the applicant is covered under the Industrial Disputes Act being the industrial workers.

The case of the respondent according to written statement is that the reference is barred by resjudicata as the workman filed suit for declaration in the Court of Senior Sub-Judge, Gurgaon, which was dismissed and appeal was filed which was also dismissed. The order of termination is correct after full fledged enquiry was conducted against him and he was found guilty although the notice was given to him on 28th July, 1976, that his past record which consisted on 10 punishment which also he considered at the time of passing the final order on consideration of his reply to the show cause notice. It was denied that the workman was not allowed

to cross examine the witness during the enquiry.

On the pleadings of the parties, the following issues were framed:—

- (i) Whether the reference is barred on the principles of resjudicata as per judgement of A.D.J. Gurgaon, dated 25th January, 1980?
- (ii) Whether the termination of services of the workman is proper, justified and in order? If not to what relief is he entitled?
- (iii) Relief?

The respondent filed the enquiry file from page 1 to 116 and produced two oral witnesses MW-1 Mool Chand Assistant, Haryana Roadways and MW-2, Shri S. N. Gambir Enquiry Officer and closed their case. The workman came as his own witness as WW-1 and closed his case.

My findings on issueswise is as under:—

ISSUE NO. 1:

Issue No. 1 is whether the reference is barred by the principle of resjudicata as per judgement of A.D.J. Gurgaon decided on 25th January, 1980. The respondent has produced copy of judgement decided on 25th January, 1980, prove the resjudicata matter in the reference. There were four issues framed in the Court on trial judge:—

- (i) Whether the order of termination of plaintiff's service is illegal, void and liable to be set aside as alleged?
- (ii) Whether the Court has got no jurisdiction to try this suit?
- (iii) Whether the notice under section 80, C.P.C is invalid?
- (iv) Relief.

The trial judge had decided issue number three in favour of the workman while issue No. 1 and 2 were found against him and in favour of the respondent. The Trial Court has decided the issue No. 2 for jurisdiction of Civil Court against the Plaintiff workman that the Civil Court has no jurisdiction to try his suit and in this

case the workman came in appeal before the appellat Court and the appellat court has held that the dispute can alone be tried in the Labour Court and not in the Civil Court. It is fact that the workman filed the declarity suit in the Civil Court at Gurgaon in which respondent raised the objections of jurisdiction which was announced that the Civil Court has no jurisdiction to try such case. They are only be tried in the Labour Court or Industrial Tribunal because it is an industrial dispute and the appellat Court affirmed the lower court judgement of this issue and dismissed the appeal so it cannot be a res-judicata in the present reference. When the learned Courts have not decided the matter on merits. The learned court had decided issue number 2 that of jurisdiction in favour of the respondent that the civil Court has no jurisdiction to try such suit so this is not a case decided on merits. The workman has rightly come with reference in this Court and there is no bar for reference after the suit. So this is decided in favour of the workman and against the respondent.

ISSUE NO. 2:

Issue No. 2 is as per reference. To prove this issue No. 2 the respondent have filed the enquiry file of the workman in which the respondent has issued the charge-sheet to the workman which are Ex. M-1, M-2, Ex. M-4 and M-5. The workman has replied,—vide Ex. M-3 and M-6 according to Ex. M-5 on 4th December, 1972. The workman was on duty with the bus No. 2467, on route No. 18 which was checked by Shri Raj Kumar at Palwal. It is alleged that two passengers were found without ticket travelling from Sohna, from whom the workman had already taken the amount of Rs. 2.20 N.P. but did not issue any ticket to them. Similarly on 5th December, 1972 the workman was running with same bus at route No. 12 which was checked by Shri Shamsher Singh at Jindapur. It is alleged that two passengers were found without ticket from whom the workman charged the fair amount but did not issue the ticket to them in lieu thereof. There was another charge of 17 passengers dated 23rd January, 1973, the workman was on duty with bus No. 1676 running Baroli-Palwal route. The bus was checked by

Shri K. L. Wahi and D. S. Sandhu along-with J. C. Prasher, D.T.C. at Rasulpur and 17 passengers were found without tickets from Barroli to Palwal, the conductor has not charged the fare. The enquiry officer was appointed to enquire the matter of the workman and enquiry was held on the charges of one and two on 20th April, 1977. Shri Raj Kumar, Inspector, who checked the bus came as witness before the enquiry officer. He has stated in his examination that he checked the bus and two passengers were found without tickets and conductor had taken Rs. 2.20 from the passengers without issuing the tickets. The workman has asked no question for cross-examining the witness. On this charge the workman also made the statement before the enquiry officer. The enquiry officer asked the workman that when you have not taken any money from the passengers then how you have not cross-examined Shri Raj Kumar on his examination in chief. The workman replied that it is my first enquiry and I did not know what question I have to ask. Further question by the enquiry officer that I had given the time to cross-examine Shri Raj Kumar. The workman replied that I did not know how to question. On the 2nd charge dated 5th December, 1972, Shri Shamsher Singh Inspector who checked the bus came as witness before the enquiry officer and stated that he found two passengers Palwal to Jindapur without tickets and conductor had taken 0.50—0.50 naye paise from these passengers and not given the tickets to them. The workman did not cross-examine him. For the third charge no witness came before the enquiry officer and the enquiry officer filed his enquiry report which is Ex. M-8 to the General Manager, Haryana Roadways, Gurgaon stating that charge No. 1 and 2 proved to be correct and charge No. 3 is not proved against the workman. The General Manager, Haryana Roadways, Gurgaon issued show cause notice which is Ex. M-9 to the workman which he received on 28th January, 1975. In this show cause notice, there is reference of ten other punishments given to the workman for the previous faults and after considering the charge-sheet and show-cause notice, the general manager, Haryana Roadways, Gurgaon, terminated the services of the claimant. The representative of the respondent

argued that the respondent has charge-sheeted the workman and hold the proper enquiry in which was given further opportunity to defend his case. The findings of the enquiry officer is quite correct according to the statement given by the witness and there is nothing wrong in the orders of the General Manager, Haryana Roadways, Gurgaon. The representative of workman argued that only two charges of the charge-sheet has been declared proved by the Enquiry Officer without taking any conjunct proof. The statement of the inspector is not sufficient to prove all the charges in both the charges two Inspectors who checked the conductor have come before the enquiry officer to state their case. Moreover, the enquiry held by the enquiry officer is not proper according to the rules of natural justice. The Enquiry Officer should have given the list of witness and documents relied upon before the enquiry started to the workman which has not given to the workman. The Enquiry Officer should have explained the enquiry procedure before starting the enquiry proceeding before him which has not been done in the present case. The workman know nothing about the procedure of enquiry and cannot question or cross-examine the witnesses which is very technical job and the enquiry officer should have provided some technical man to help the workman in the enquiry which was not done by the enquiry officer. The enquiry officer has recorded statements of two Inspectors who had checked the conductor and came in the prosecution box relied upon is not good in the eye of law and the person who has checked the bus and reported the matter cannot go against his report. The enquiry officer should have called the passengers who were without tickets or the inspectors who have taken the statements of the persons who were without tickets but the people had a stile witness in the enquiry is not a natural justice to the workman if the enquiry officer had provided a technical man to the workman in the enquiry proceeding then the matter would have been different. The representative of the workman referred P.L.R., 1967 page 119 of our High Court in which their learned judge had held that if the main witness is withheld by the respondent the influence will go in favour of the claimant. By going through the enquiry file it is very well clear that no

opportunity was given to the workman by the enquiry officer. He further argued that the respondent had not supplied the copy of the report of the enquiry officer to the workman which is also a denial of opportunity to the workman. He has referred 1973 Volume I, S.L.R. 1222 of Delhi High Court in which the Lordships has held that non-supply of copy of the enquiry report of the enquiry officer after one even not asked for is a denial of opportunity. He further argued that it is case of only Rs. 3.20 on which the punishing authority has given illegal verdict. The punishing authority has considered the previous punishments which are showing in the show-cause notice Ex. M-9 which are illegal one. The previous punishment had been given by the respondent and it cannot be taken into consideration against him. He further argued that the respondent had admitted this fact in their written statement that the respondent had consideration for previous punishments of the workman which is illegal. The fault of the workman was not so big as the punishment is. On such small defaults the services of an old workman should have not been terminated. There are other means to punish the workman. He further argued that the enquiry officer submitted his report as Ex. M-8. He has not discussed any thing for the report as there was nothing to discuss in this report. He has simply decided that charge No. 1 is proved against the workman. The enquiry officer should have given his full view why and how the charges are proved. The representative of the workman cited 1980 Indian Factories Journal, Volume 57, Page 320 of the Punjab and Haryana High Court in Case Bhajan Singh *versus* State of Punjab and others where the Lordship had held as under:—

“Though previously and Industrial Tribunal had no power to interfere with an order of punishment issued by an employer after a proper and valid domestic enquiry, after the enactment of section 11-A of the Industrial Disputes Act, 1947, the Tribunal is now clothed with the power of reappraise the evidence in the domestic enquiry and satisfy itself whether the said

evidence established the misconduct alleged against the workman. Ultimately it may hold that the misconduct itself is not proved or that the misconduct does not warrant the punishment of dismissal or discharge", which clears the position of this court. And argued that this court can go into the evidence of the enquiry.

I agree with the arguments of the workman. The enquiry officer has not given full opportunity to the workman in the enquiry. The Enquiry Officer should have helped the workman in the enquiry proceeding by providing some helpers in the enquiry proceeding. The learned enquiry officer had not undertaken the technicalities of the inquiry. Moreover the subordinate is always a subordinate. He cannot question to his superior officer. Moreover, the officers issue the show-cause notice should not have mentioned the previous fault and punishment in the show cause notice which can prejudice the mind of the punishing authority and in this case same has happened in my view, otherwise it was the small thing of Rs. 3.20 against the workman which can be converted into the stoppage of the increment or other kind of punishment and not as high as termination. So the workman is entitled for his reinstatement with continuity of service but not with full back wages because the workman is terminated in the year of 1976 and he has come to this Court in the year 1980 after a lapse of four years due to his negligence and his negligence should not be burdened treasury of the Government. No order as to costs. This may be read an answer of this reference.

Dated the 26th October, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana.
Faridabad.

Endorsement No. 3142, dated 5th November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under

section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana.
Faridabad.

No. 9(1)81-6Lab. 13543.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. S. J. Knitting and Finishing Mills Pvt. Ltd. 13/7, Mathura Road, Faridabad.

IN THE COURT OF
SHRI HARI SINGH KAUSHIK,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD.

Reference No. 544 of 1980

between

SHRI KEDAR PARSHAD WORKMAN
AND THE RESPONDENT MANAGE-
MENT OF M/S S. J. KNITTING AND
FINISHING MILLS PVT. LTD., 13/7,
MATHURA ROAD, FARIDABAD.

Shri G. S. Chaudhry, for the
workman.

Shri B. R. Grover, for the manage-
ment.

AWARD

This reference No. 544 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/58620, dated 1st December, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Kedar Parshad workman and the respondent management of M/s. S. J. Knitting and Finishing Mills Pvt. Ltd., 13/7 Mathura Road, Faridabad. The term of the reference was:—

"Whether the termination of services of Shri Kedar Parshad was justified and in order? If not, to what relief is he entitled?"

On receiving this reference, the notices were issued to the concerned parties and they appeared in the Court and filed their pleadings. On the pleadings of the parties, issues as per reference was drawn.

According to the demand notice, the claimant's case is that he was appointed on 27th November, 1978 as a helper at the salary of Rs. 255/-. He was terminated on 6th February, 1980 without any reasons or notice to the claimant. The case of the respondent regarding to his written statement is that the applicant was appointed on 21st November, 1979 as Assistant Printer and as job work for which he was appointed had completed. The services of the workman were terminated on 6th February, 1980 and as the workman has completed one year so he was offered notice pay and retrenchment compensation at the time of termination which he refused to accept. The respondent management filed Exhibit M-1 an application for appointment dated 21st November, 1979 and Exhibit M-2 appointment letter dated 21st November, 1979 and produced one oral evidence of Shri Ram Nath Sharda, Personnel Officer of the respondent management as MW-1 and closed his case. The workmen produced Exhibit W-1 identification certificate of E.S.I. and came as his own witness as MW-1 and closed his case. My finding on issue is as under:—

The representative of the management argued that the claimant was appointed,—vide Exhibit M-1 an application of the claimant dated 21st November, 1979 and appointment letter Exhibit M-2 of the same date which bears the signature of the claimant. The workman was terminated after finishing the job work for which he was appointed on 6th February 1980. The management offered one month notice pay and other dues to the workman but he refused to take the same. The representative of the respondent admitted during the course of argument that the claimant has completed 240 days and so the retrenchment compensation was offered to the claimant. On other hand the representative of the workman argued that according to the written statement admission that the claimant has completed one year and on account of surplus he was removed so it

is a retrenchment, but the respondent management has not complied with retrenchment provision under the law and rules 75, 76 of the Haryana Government. He has further argued that the claimant was not on temporary appointment and his termination is illegal according to the law. The representative of the workman draw my attention towards the written statement of the respondent where he admitted one thing that is the workman has completed one year and the workman joined on 21st November, 1979 and terminated on 6th February, 1980. How the Exhibit M-1 & 2 can be relied upon because it does not come to one year it hardly complete 3 months so the workman was not appointed on 21st November, 1979 but on 27th November, 1978 as permanent employee. He cited 1968 Labour Industrial Cases, 1951 Volume I, C. N. 86, Punjab and Haryana page 351 and 1980 Labour Industrial Cases Volume 13 Page 687 which are as under :—

“There are two conditions, laid down by S. 25F which have to be satisfied by the employer before he can retrench a workman who had been in continuous service for not less than one year in his industry. The first is that he should be given one month's notice in writing mentioning the reasons for his retrenchment and the period of notice had expired or if no such notice was given, then he should be paid in lieu thereof wages for the period of notice. The second is that the workman should, at the time of retrenchment, be paid compensation which would be calculated in accordance with the principle laid down in sub-section (b) of S. 25F. The time of retrenchment will, in the case of a workman who had been given one month's notice, be at the end of that period and in the case of the workman, who was to be paid wages for the period of the notice in lieu of such notice, it will be the one fixed by the employer.”

2. “Section 25-F prescribes that no workman employed in any industry who has been in continuous service for not less than one year shall be retrenched by the employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid, in lieu of

such notice, wages for the period of the notice; (b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and (d) notice in the prescribed manner is served on the appropriate Government or any such authority as may be specified by the appropriate Government by notification in the Official Gazette. There is a proviso to Clause (a) the notice contemplated by the clause if the retrenchment is under an agreement which specifies the date for the termination of service."

After hearing the argument and going through the file carefully I am of the view that the respondent management has terminated the services of the claimant without adopting the provision of the Industrial Disputes Act, 1947. Though Shri Ram Nath, Personnel Officer of the respondent company as MW-2 stated that the services of the claimant were terminated on finishing the job work for which the workman was employed. The witness has admitted that he was discharged on 6th February, 1980 and stated in his statement that the claimant was offered his dues he refused. But there no proof given on the file about the refusal, the respondent has taken no any other measure to send the same to the claimant by money-order. He has simply stated that claimant dues are still pending in the factory which he can collect at any time. This shows that they have not offered the same to the claimant and they have not tried to pay him. The respondent management has failed to prove his case. So the termination by the respondent management is not justified and in order and the claimant is entitled to his re-instatement with full back wages and continuity of service. No order as to costs. This may be read an answer of this reference.

The 4th November, 1981

HARI SINGH KAUSHIK.

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3152, dated the 6th November, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within one week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-6 Lab./13544.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Precision Stampings, Plot No. 106, Sector 24, Faridabad.

IN THE COURT OF
SHRI HARI SINGH KAUSHIK,
PRESIDING OFFICER,
LABOUR COURT
HARYANA, FARIDABAD.

Reference No. 39 of 1980

between

**SHRI RAGHBIR SINGH WORKMAN
AND THE MANAGEMENT OF M/S
PRECISION STAMPINGS, PLOT NO.
106, SECTOR 24, FARIDABAD.**

Present :—

Shri H. R. Dua, for the workman.

Shri S. L. Gupta, for the management.

AWARD

This reference No. 39 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/4/79/5254 dated 29th January, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Raghubir Singh workman and the management of M/s. Precision Stampings,

Plot No. 106, Sector 24-A, Faridabad.
The term of the reference was:—

Whether the termination of services of Shri Raghubir Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the above order of reference, notices were sent to the parties. The parties appeared and filed their pleadings.

According to the demand notice and claim statement the case of the claimant is that the union of the factory call for the strike and there was a strike in the factory and it was settled under section 12(3) of the Industrial Disputes Act, 1947 on 21st November, 1979. According to this settlement the respondent agreed to give the duties to all the workmen and the claimant reported for duty on 27th November, 1979 but the respondent did not give the duties to the applicant. The claimant made a complaint to the Labour Inspector but there was no result and the claimant issued the demand notice on the respondent. The termination of the workman is illegal, wrongful, *mala fide* and against the principles of natural justice and the claimant is entitled to reinstatement with continuity of service with full back wages.

The case of the respondent according its written statement is that the present case is a case of loss of lien and the same is not covered under section 2A of the Industrial Disputes Act, 1947 and the reference is bad in law. There was a strike in the factory which came to an end through a settlement but the settlement does not apply to the claimant as he was not among the strikers. The claimant lost lien from the service of the company on account of long un-authorised absence. The claimant was on duty during the period of the strike and went on leave to his home and after 22nd September, 1979 he was absenting from his duty without any reason. Two letters were sent to his home address but there was no reply and his name was struck off under clause 12(7) of the certified standing order of the Company. And the

claimant is not entitled to any relief. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the workman voluntary absenting himself from the duty and thus lost his right of employment with the management? OPM
- (2) Whether the workman is engaged his full employment at present since his leaving the respondent Company? OPM
- (3) Whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled?

My findings on issue No. 1 is as under:—

ISSUE NO. 1:

To prove this issue the respondent produced Exhibit M-1 the leave application of the claimant dated 23rd August, 1979 for 7 days, leave from 24th August, 1979 to 31st August, 1979. The application is admitted by the claimant in his cross examination as WW-2. The respondent put on the file Exhibit M-2, M-3 and M-4, medical certificates by the Doctor which is also admitted by the claimant in his cross examination as WW-2. These documents are the medical certificate from the doctor of the claimant's village. The respondent witness MW-1 Shri S. K. Aggarwal Manager of the respondent factory has stated in his examination chief that the respondent received medical certificate of the claimant. He stated in his statement that the workman proceeded on leave on 24th August, 1979 to 31st August, 1979 with the sanctioned leave. Thereafter they received a medical certificate from 1st September, 1979 to 7th September, 1979 Exhibit M-3. Then from 8th September, 1979 to 22nd September, 1979 the certificates received from the workman and the respondent sanctioned the same. But after 22nd September, 1979 the workman did not shown himself in the factory for quite a long period without any intimation. The respondent sent a letter

dated 26th September, 1979 which is Exhibit M-5 on the workman at his home address under U.P.C. which is Ex. M-6. Ex. M-7 a letter dated 8th October, 1979 was also sent to the workman,—vide Exhibit M-8 is a U.P.C. receipt but received no reply from the workman. The respondent waited the workman upto 8th October, 1979 according to their certified standing orders and struck off the name of the workman from the roll of the company on 8th October, 1979. The workman did not participate in the strike from 22nd September, 1979 to 8th October, 1979 or afterwards. The representative of the respondent argued that according to these documents which are admitted by the workman in his cross examination. It is very clear that the workman was not on strike and he was on leave and went home. He further argued that the strike in the factory started on 12th August, 1979 in which all the workers of the factory went on strike but in a group they started coming on duties. The workman resumed his duty on 19th August, 1979 at night after leaving the strikers. This fact is also admitted by the workman in his cross examination as WW-2. It clearly shows that the workman was not on strike. After on duty the workman took leave from the respondent on 24th August, 1979 up to 31st August, 1979. The respondent representative argued that when there is admission of the workman that he joined the duty after strike on 19th August, 1979 and went on leave on 24th August, 1979 and then send the medical certificate from his home. It is very clear that the workman was on leave and not on strike. The workman has admitted in his cross examination that he did not informed the management about his joining the strike after his recovery from illness then how the management can know of this facts that the workman is on strike. If the workman has to go on strike after coming from leave then he should have informed this facts to the respondent to know of this facts. The respondent has taken the legal and right action on the workman according to its certified standing orders. The representative of the workman argued that the workman did not receive any letter from the respondent and the termination is illegal as the workman

was on strike and according to the settlement between the parties dated 21st November, 1979. The respondent should have taken back the workman on duty which is not done and it is illegal. The representative of the workman is silent on the leave and medical certificate of the workman. He argued that when the respondent did not take the workman on duty. The workman made a complaint to the Labour Inspector, the copy of which is Exhibit W-1 and the Labour Inspector, failed in his efforts to provide the duty, so the workman send the demand notice to the respondent and other authority.

After hearing the arguments and going through the file I am of the view that the respondent has proved its case fully well as argued by the respondent representative. After admission of the workman on the main points there is nothing left to dis-believe the respondent evidence documentary as well as oral. So Issue No. 1 goes in favour of the respondent and against the workman. The workman has voluntary absenting himself from his duty and lost his right of employment.

ISSUE NO. 2:

Issue No. 2 is whether the workman is engaged his full employment since his leaving the respondent company. After discussing the issue No. 1, I think there is no need to discuss this issue. Neither of the parties as adduced any evidence on this issue and both the representative have not argued on this issue.

ISSUE NO 3:

Issue No. 3 is as per reference. As discussed above in issue No. 1, the respondent management has rightly struck off the name of the workman from its roll and justified in its orders. And the workman is not entitled to any relief. No order as to costs.

The 2nd November, 1981

HARI SINGH-KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3151, dated the 6th November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-6Lab./13545.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s New Allenberry Works, 14/7, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH
KAUSHIK
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 13 of 1981
between

SHRI ZAKIR KHAN, WORKMAN AND
THE MANAGEMENT OF M/S NEW
ALLENBERRY WORKS, 14/7,
MATHURA ROAD,
FARIDABAD

Shri Yoginder Singh for the workman.

Shri K. P. Aggarwal for the management.

AWARD

This reference No. 13 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana.—*vide* his order No. ID/FD/260-80/65213, dated 26th December, 1980 under section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Zakir Khan, workman and the

management of M/s New Allenberry Works, 14/7 Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Zakir Khan was justified and in order? If not, to what relief is he entitled?

On receipt of the above order of reference, notices were issued to the parties. The parties appeared and filed their pleadings.

The case of the workman according to his demand notice is that he joined the respondent-company on 10th April, 1978 as Drill Operator at Rs. 389 per month. He went on leave from 2nd August, 1980 to 14th August, 1980. On 12th August, 1980 he fell ill and sent a medical certificate on 23rd August, 1980 delayed submission of the medical certificate was due to flood in the Area and there were no postage available in the Post Office up to 23rd August, 1980. When he recovered from illness on 27th August, 1980, took the fitness certificate and come to join the duty on 29th August, 1980 but the respondent refused to take on duty. So the termination is illegal and bad. The workman has prayed for his reinstatement with continuity of service and full back wages.

The case of the respondent according to its written statement is that the workman was appointed on 11th April, 1978 at the rate of salary of Rs. 270 per mensem. The workman was sanctioned leave from 2nd August, 1980 to 14th August, 1980 but he over stayed leave from 15th August, 1980 without any permission or authorisation and remained absent inspite of Registered Call letter, dated 20th August, 1980 which was sent to him at his home address given by the applicant in his leave application, dated 1st August, 1980, advising him to resume his duties by 26th August, 1980. otherwise his name will be struck off from the Roll of the Company. But inspite of the same he failed to do so and did not communicate to the respondent. The circumstances in which he had to remain absent and the management left with no other alternative but to drop his name from the Muster Rolls as

certified standing orders of the Company. That when no communication was received up to 26th August, 1980, the management sent final letter on 27th August, 1980 by Registered Post informing the workman about his name has been dropped from Muster Rolls on 27th August, 1980. So the action of the respondent is according to its certified standing orders which is legal one and the workman is not entitled for any relief in the above circumstances.

On the pleadings of the parties, the following issues were framed on 10th March, 1981:—

- (1) Whether it is a case of voluntary abandonment of service by the workman as he absented himself from duty for more than stipulated period?
- (2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?
- (3) Relief?

My findings on issue No. 1 is as under:—

ISSUE NO. 1:

The representative of the respondent argued on this issue that it is admitted fact that the workman went home after taking the leave from the respondent from 2nd August, 1980, to 14th August, 1980. After 14th August, 1980, the respondent received no information from the workman and sent a letter, Exhibit M-3, dated 20th August, 1980 through Registered post. The postal receipt, Exhibit M-4 is a prove of this registered letter. In this letter, the respondent cleared his position according to its certified standing orders informed the workman to report for duty up to 26th August, 1980. When the workman did not receive any intimation up to 26th August, 1980, the respondent sent an other letter, Exhibit M-5, dated 27th August, 1980. The postal receipt is, Exhibit M-6. The workman is informed that his name has been dropped from the Muster

Rolls on 27th August, 1980. The respondent received one medical certificate, Exhibit M-7 on 28th August, 1980 which was entered in the Receipt Register of the Company on the same day at No. 5046. This medical certificate was received after the final order of the respondent Company. So no action was ordered on this medical certificate. He further argued that according Exhibit M-2, the certified standing orders of the Company. The respondent struck off the name of the workman under Section G(5) which is very clear as under:—

“If the workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless (a) he returns within 10 days of the commencement of the absence on the expiry of the leave and (b) explains to the satisfaction of the Manager the reasons of his absence or his inability to return on the expiry of the leave, as the case may be.”

The respondent has taken action under its certified standing orders which is legal one. The workman has voluntarily abandoned his service by absenting himself from the duty for more than stipulated period given in its certified standing orders. He further argued that these facts has been corroborated by the witness MW-1 fully well. The representative of the workman argued that the workman went home with sanctioned leave and there he fell ill and sent the letter to the respondent which is Exhibit W-2/A, dated 12th August, 1980,—vide Exhibit W-3 which is postal receipt, dated 23rd August, 1980. He submitted that there was a flood in the Area and postage were not available. So the workman could not send the medical certificate at an early date and it was sent on 23rd August, 1980 from the city. In the medical certificate the Doctor has advised the workman 15 days rest. The workman reached at factory on 28th August, 1980 and 29th August, 1980 but he was not taken on duty. On the same date the workman submitted one application, Exhibit W-1 with Exhibit M-2 a fitness certificate through Registered post on 29th August, 1980 to the respondent. The workman submitted one

application, Exhibit W-4 to the Labour Inspector, Faridabad, on 1st September, 1980 and when the workman did not find any solution then submitted his demand notice on 30th September, 1980 to the authority. He further argued that the intention of the certified standing orders is not the same as stated by the representative of the respondent. The workman should have given more time for the presence in the factory and he should be heard, which is not done by the respondent. The order of the respondent Company are illegal. And the workman comes under the term of retrenchment not abandonment from the service.

After hearing the arguments of both the parties and carefully gone through the whole file I am of the opinion that there is no illegal order done by the respondent by struck off the name of the workman from the Muster Rolls because it is admitted facts from both the parties. The workman went home with sanctioned leave up to 14th August, 1980. The respondent sent two letters, Exhibit M-3 and M-5 on the home address of the workman. The address given in the postal receipt, Exhibit M-4 and M-6 are admitted to be correct by the workman in his cross-examination as WW-1. When the address is admitted and letters were sent through registered post the denial of the workman for not receiving these letters can not be believed. After receiving these letters the workman should have submitted his medical certificate and leave application at an early date, which was submitted very late and received in the Company after its final orders, dated 27th August, 1980. The story of postage not available can not be believed. The claimant has produced a photo copy of a certificate which is, Exhibit W-1/A from the Post Office of the workman village, which was not duly proved by the workmen and can not be believed. The medical certificate submitted by the workman, dated 12th August, 1980 through a registered post which was received by the respondent on 28th August, 1980.—*vide* Exhibit M-7 and postal receipt, Exhibit M-8 does not clear the recommendation of the Doctor for the rest according to this certificate which also can not be believed as valid. So in view of the above discussion I am of the

opinion that the action of the respondent is correct according to the certified standing orders and there is no mistake with the order of the respondent. So this issue is decided in favour of the respondent-management and against the workman.

ISSUE NO. 2:

Issue No. 2 is as per reference. After deciding the issue No. 1 in favour of the respondent, I think there is nothing remains to discuss for this issue. The workman abandoned his service by absenting himself from duty and he is not entitled for any relief, under the law. No order as to costs.

The 4th November, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3150. dated 6th November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 7th December, 1981

No. 9(1)81-Lab./13815.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of

M/s Haryana Coach Body Builders,
Gohana Road, Rohtak:—

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
ROHTAK

Reference No. 153, 154, 155 and 156
all of 1978

between

WORKMAN S/SHRI MAM CHAND,
SUKH PAL, BERHAM SINGH AND
NAR SINGH AND THE MANAGEMENT
OF M/S HARYANA COACH BODY
BUILDERS, GOHANA ROAD,
ROHTAK

Present:

No one for the workmen.
Shri M. M. Kaushal for the manage-
ment.

AWARD

These references have been referred to this court by the Hon'ble Governor,—*vide* his orders No. ID/RTK/231-77/32842, dated 13th July, 1978, ID/RTK/231-77/32837, dated 13th July, 1978, ID/RTK/231-77/22831, dated 13th July, 1978 and ID/RTK/231-77/32825, dated 13th July, 1978, under section 10(1)(c) of the Industrial Disputes Act, for adjudication of the dispute existing between the workmen S/Shri Mam Chand, Sukh Pal, Berham Singh and Nar Singh and the management of M/s Haryana Coach Body Builders, Rohtak. The term of these references was:—

"Whether the termination of services of the workmen were justified and in order? If not, to what relief are they entitled?"

On the receipt of the order of references notices as usual were sent to the parties. The parties put in their appearance in response to the notices on 1st September, 1978, filed their respective pleadings and issues as under were framed on the basis of their pleadings:—

- (1) Whether the reference is hit under a settlement, dated 4th July, 1975?

- (2) Whether the reference is barred by the award of the Industrial Tribunal in reference No. 132 of 1975?

- (3) Whether the reference is incompetent as alleged by the management?

- (4) Whether the termination of services of the workman was justified and in order?

- (5) If not, to what relief is he entitled?

The four references numbering 153, 154, 155 and 156 all of 1978 involved common question of law and facts. All these references were consolidated by order of my learned predecessor, dated 4th October, 1978. Evidence and further proceedings were to be recorded in reference file No. 153 of 78 which was to be read in all the other consolidated references. By this award I disclose of all these references.

The management examined Shri Bihari Lal, clerk, of the office of Labour Officer, Bhiwani, Shri Charan Dass, clerk of the office of Industrial Tribunal, Faridabad, Shri Ram Sarup, Assistant, office of Labour Commissioner, Haryana, Chandigarh, Shri Gurdutt, Partner and Shri Randhir Nagpal, partner, as their witnesses and closed their case. None of the workmen came to depose before me but only filed the list of interrogatories to be replied by the management which was replied by way of an affidavit filed by Shri Gurudutt, the partner of the respondent. The workmen were proceeded against *ex parte* on 2nd July, 1981. I heard the arguments from the side of the management on 4th August, 1981 and decide issuewise as under:—

ISSUE NO. 1:

The brief facts of the case are that the respondent was engaged in the work of building the bodies of the buses on order from the Haryana Government when the transport business was nationalised and taken over by the state. Prior to August, 74, the policy of the Government was to have composite bodies

involving woodwork as well as steelwork. The wood work was to be completed by carpenters and helpers provided to each one of them. After August, 1974, the Government changed the patron of bodies of the buses to only of metal instead of composite type. When there were no orders for composite bodies the respondent was left with no choice but to retrench the workers who were engaged for fabrication of woodwork of the chassis. The workmen served a demand notice which lead to a reference to the Industrial Tribunal, Faridabad, numbering 132 of 1975. In the meantime the workmen served another demand notice in their individual capacity under section (2)(A) of the Industrial Disputes Act, on 1st May, 1975. A settlement was arrived at under section 12(3) of the Industrial Disputes Act, on 4th July, 1975. The proceedings recorded by the Conciliation Officer on 4th July, 1975 are Exhibit M-6. The order sheet shows that no settlement could be reached after discussion. But at a later stage it has been recorded that the settlement was reached. The workmen have addressed a letter to the management, dated 6th September, 1976, the copies of which were endorsed to the Labour-cum-Conciliation Officer, Sonapat and also to Labour Commissioner, Haryana, Chandigarh, which is, Exhibit MW-3/5 wherein the workmen have alleged that they had come to know of the settlement, dated 4th July, 1975 during the course of proceedings in reference No. 132 of 1975 before the Industrial Tribunal, Faridabad, to which they showed their ignorance and the same was not binding on them. But this letter was written by the workmen after a considerable lapse of five months after the award of the Industrial Tribunal, Faridabad, the same cannot be said to be a spontaneous reaction and is an afterthought and a false and concocted story cooked up by the workmen in order to raise a further demand which they had actually done by the present demand leading to this reference. From the statement of MW-3 it is clear that copy of the settlement was sent by the Labour-cum-Conciliation Officer, Sonapat, to the Labour Commissioner along with two copies of the demand notice also with the letters of authority given

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by the workmen in favour of Shri B. S. Punal. The subsequent present references are surely hit by the settlement under section 12(3) of the Industrial Disputes Act arrived at between the parties which has been Exhibited M-7. The settlement has been admitted by the authorised representative of the workmen in his statement when he appeared as WW-2 before the Industrial Tribunal, Faridabad. The references are, therefore, bad in law as there existed no dispute between the parties at the time of referring the dispute to this court for adjudication. This issue is accordingly decided in favour of the management.

ISSUE NO. 2 TO 5:

In view of my findings on issue No. 1 the remaining issues needs no decision. The reference is answered and returned accordingly. It is further ordered that a copy of this award may also be placed on each of the files in reference No. 154, 155 and 156 all of 1978.

The 14th November, 1981.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endorsement No. 3988, dated 16th November, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

H. L. GUGNANI,

Commissioner and Secretary to
Government, Haryana,
Labour and Employment
Department.